



सत्यमेव जयते

न्यायालय मुख्य आयुक्त निःशक्तजन
Court of Chief Commissioner for Persons with Disabilities
सामाजिक न्याय एवं अधिकारिता मंत्रालय
Ministry of Social Justice & Empowerment
निःशक्तता कार्य विभाग / Department of Disability Affairs

Case No.203/1021/11-12

Dated:- 06.03.2014

In the matter of:

Shri Bikash Patra,
SSA (Toxicology),
Central Forensic Science Laboratory,
30, Gora Chand Road,
Kolkata – 700 014.

..... Complainant

Versus

Directorate of Forensic Sciences,
(Thru Chief Forensic Scientist-Incharge),
Ministry of Home Affairs,
Block No.9, 8th Floor,
C.G.O. Complex,
Lodhi Road,
New Delhi – 110 003.

..... Respondent No.1

Bureau of Police Research & Development,
(Through its Director)
Ministry of Home Affairs,
Block No.11, 3rd/4th Floor,
CGO Complex, Lodhi Road,
New Delhi-110003.

..... Respondent No.2

Date of hearing : 10.12.2013, 26.02.2014

Present :

10.12.2013

1. Shri Bikash Patra, Complainant.
2. Dr. R.M. Tripathi, SSO(FS) on behalf of the Respondent.

26.02.2014

1. Shri Bikash Patra, Complainant.
2. Dr. R.M. Tripathi, SSO(FS) on behalf of the Respondent.

ORDER

The above named complainant, a person with 40% locomotor disability filed a complaint dated 19.08.2011 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act regarding his promotion.

2. The complainant submitted that he was appointed to the post of Laboratory Assistant in 1991. Central Forensic Science Laboratory (CFSL) promoted four persons to the post of Scientific Assistant in 1997, but he was promoted in the post of Scientific Assistant in 2001. He has also submitted that the authorities did not take any action to reserve the post for persons with disabilities as provided in the Government orders.

.....2/-

3. As per Notification Nos.16-70/2004-DD-III dated 18.01.2007 and 15.03.2007 issued by Ministry of Social Justice and Empowerment the post of Scientific Assistant is identified for OL & HH category in Group 'C' and Sr. Scientific Assistant is identified for OA, OL, HH, B and LV categories.
4. As per DoP&T's O.M. No.36035/1/89-Estt.(SCT) dated 20.11.1989, reservation for persons with disabilities in promotion to Group 'C' and 'D' posts was introduced. Separate 100 point reservation rosters for direct recruitment and for promotion need to be made for effecting reservation for persons with disabilities. In this regard DoP&T O.M. No.36035/3/2004-Estt. (Res.) dated 29.12.2005 may please be referred. Further, Section 47(2) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 provides that no promotion shall be denied to a person merely on the ground of his disability.
5. The matter was taken up under section 59 of the Act with the respondent vide letter dated 27.10.2011.
6. Senior Scientific Officer Gr. I(FS), Directorate of Forensic Science Service, New Delhi vide letter No.DFSS/4/39/2012-447 dated 18.10.2012 submitted that the Directorate of Forensic Science Service came into existence on 31.12.2002 after bifurcation of a major part of the Bureau of Police Research & Development (BPR&D) and started independently working w.e.f. 01.04.2003. As such the promotions to the post of Scientific Assistant during the years 1997 and 2001 were made by the BPR&D as CFSL was not in existence at that time. The respondent further submitted that as per DoP&T OM no.36035/5/84-stt.(SCT) dated 28.0.1986, the post of Scientific Assistant was not identified as suitable for persons with disabilities. Therefore, the reservation in promotion to this post under their Directorate was not implemented. The post of Scientific Assistant has been identified for OL & HH category of disability vide Ministry's notification dated 18.01.2007.
7. The copy of reply dated 18.10.2012 of the respondent was forwarded to the complainant vide this Court's letter dated 02.01.2013 for submission of his comments/rejoinder, if any.
8. After considering the respondent's letters dated 07.06.2012, 18.10.2012 and 23.08.2013 and complainant's letters dated 20.11.2012, 23.01.2013, 25.03.2013, 20.05.2013, 02.07.2013, August, 2013 and 02.09.2013, the case was scheduled for hearing on 10.12.2013.
9. The complainant claimed that the seniority list is prepared by the Department and carries some anomaly in inter-se seniority between him and Shri A.K. Pal from 1991 onwards, whereas the respondent stated that the merit list was provided by the Staff Selection Commission but being a very old case of 1991, there is no document available at this juncture to produce before the Court to prove that this list has been forwarded by the staff Selection Commission. The complainant also claimed that no promotion was made in the Toxicology Department from 2001 but persons were recruited directly in the very Department which shows that there were sufficient vacancies whereas the respondent replied that vacancies are filled up as per the Roster point system and they cannot help if the point does not come as per Roster point in the Toxicology Department. Candidates are recruited directly otherwise vacancies are filled up by promotion and this happens in case of other officers and other departments also.

10. The complainant further submitted that 4 persons were promoted in 1997 but he was not promoted. On the other hand, the respondent submitted that promotions were made to the four posts of Scientific Assistants from the feeder grade of Laboratory Assistant w.e.f. 31.07.1997 but no reservation was made for PH employees. The respondent also submitted that this office has been functioning independently with effect from 01.04.2003 and they are not having all the records with them. Regarding the Seniority List and the merit list of the employees, all the relevant documents are available with the Bureau of Police Research & Development (BPRD).

11. This Court observes from the documents that the issue of promotion of complainant relates to the year 1997 and the respondent's organization was established in the year 2003, therefore, it is necessary to implead the Bureau of Police Research & Development as Respondent No.2 in the matter and the copy of the Record of Proceedings be sent to Bureau of Police Research & Development for necessary action.

12. This Court also observes from the information regarding details of vacancies filled since 1996 which is enclosed with the letter No.DFSS/4/39/2012 dated 18.10.2012 of the Directorate of Forensic Science Services, Ministry of Home Affairs, New Delhi, 16 vacancies in Group 'C' were filled from 1996 and no person with disability was appointed. Similarly, 28 persons were promoted in Group 'C' and no person with disability was promoted.

13. In the light of above, the respondents are directed to submit the following information to this Court both before the next date of hearing i.e. 26/02/2014 at 3.00 PM :-

- (i) The respondent No.2 is directed to confirm whether any reply was given to the complainant's representations dated 21.04.1998 and dated 09.09.1998.
- (ii) Whether any Reservation Roster was prepared as per extent rules? If so, the reasons for not providing the benefit of reservation in promotion to the complainant in the light of the DoP&T's O.M. No. 36035/1/89-Estt (SCT) dated 20.11.1989 vide which there is reservation in promotion in Group 'C' and 'D' for persons with disabilities.

14. The case was heard on 26.02.2013. Following is the factual matrix of the case:-

The complainant, Shri Bikash Patra happens to be a person with locomotor disability (40%). He joined the Central Forensic Science Laboratory, Chandigarh on 16.12.1991 as Laboratory Assistant. He was subsequently promoted to the post of Scientific Assistant vide Office Order No. 13/10/97-Adm.II dated 11.06.2001. Thereafter, he was promoted to the post of Senior Scientific Assistant on 02.04.2007. His claim is that he should have been promoted in the year 1997 on completion of 5 years of completed service and that he should have been given the benefit of reservation of promotion in 'D' and 'C' category of posts vide DoP&T O.M. No.36035/1/89-Estt.(SCT) dated 20.11.1989. He contended that he was neither promoted in 1997 to the post of Scientific Assistant which according to him was due nor he was given the benefit of the said Office Memo. of

DoP&T issued in the year 1989. He also alleged that never ever was he given the benefit of reservation in promotion available to persons with disabilities vide DoP&T's O.M. dated 20.11.1989.

15. It would be quite in context to note here that the Department where he was joined, namely, Bureau of Police Research & Development (BPR&D) got bifurcated on and from 31.12.2002 and another Department, namely, Directorate of Forensic Science Services(DFSS) got created and the complainant has since been a part of that newly created Department.

16. During the course of hearing, the complainant, reiterated his written submissions and alleged that one Shri Arun Pal was promoted from Laboratory Assistant to the post of Scientific Assistant on 09.04.1996, i.e., before he even completed 5 years of service which constitutes the eligibility criteria for the said promotion as he joined as Laboratory Assistant on 20.11.1991. The complainant further highlighted his claim that he should be retrospectively promoted w.e.f. 1997 on completion of 5 years of service with all consequential benefits.

17. The respondent No.1 reiterated their written submissions stating that they are not in possession of the relevant records as they date way back to the years 1996 to 2002 and as at that point of time, the Department was one with BPR&D. The respondent No.1, with reference to the complainant's representations, also submitted in his written submissions dated 23.08.2013 as follows:-

“(1) (iii) Further, it is also submitted that in any of the above mentioned representations, Shri Bikash Patra had not submitted any representation/claim for getting the reservation benefit under the PH Quota.”

18. Respondent No.2, namely, Bureau of Police Research & Development (BPRD) did not even bother to enter appearance in the Court and tried to abdicate their responsibility merely by writing a vague and brief letter No.16/10/2011-Adm BPR&D dated 21.01.2014 addressed to the Chief Forensic Scientist, Directorate of Forensic Science Services, CGO Complex, Lodhi Road, New Delhi with a copy endorsed to this Court, which states as follows:-

“As all related documents of officers of CFSLs are with the Directorate of Forensic Science Services, I am directed to enclose herewith a copy of the Record of Proceedings received from the Court of the Chief Commissioner for Persons with Disabilities, Ministry of Social Justice & Empowerment, Department of Disability Affairs, New Delhi's letter No.203/1021/11-12/R82 dated 24.12.2013 for further necessary action at your end.”

19. In the course of the hearing, it turned out that both the respondents have engaged in the game of passing the buck to each other under the plea of bifurcation of the Department as stated above on and from 31.12.2002. Besides, it appeared that the respondent No.1 either had no clarity or did not give the right answer to the relevant queries of this Court. The respondent No.1 further stated that the information which they submitted vide their letter No.DFSS/4/39/2012 dated 18.10.2012 relates to the period on and from 31.12.2002 i.e. from the date of formation of the new Department, namely, Directorate of Forensic Science Services as indicated in the foot note.

20. The respondent No.1 further stated that though they have been maintaining Roster on and from the date of formation of their Department, they have been committing error with regard to Roster point until this Court corrected them so that now they are in the process of revising the Roster accordingly in line with point No.1, point No. 34 and point No. 67 respectively.

21. It, therefore, follows from above that the entire matter is replete with umpteen complications; that it relates to a period way back to 1997; and, that this complication further stands compounded on account of the inability of both the respondents to furnish proper relevant records apparently under the plea that the matter is too old and the Department of BPR&D got bifurcated.

22. It would also be in the fitness of things for this Court to observe that it appears from the information furnished by the respondent no.1 to this Court vide their letter No.DFSS/4/39/2012 dated 18.10.2012 that they have promoted 28 persons in 'C' category of posts ever since the creation of their Department without giving the benefit of reservation in promotion available to persons with disabilities vide DoP&T's OM dated 20.11.1989. It would further be quite in context for this Court to also express the view that even if the complainant did not, by representation, claim the benefit of such reservation as alleged, it was incumbent on the part of respondents to give the complainant what was due to him. It is possible that the complainant did not claim the said benefit out of ignorance of the existence of such benefits.

23. Be that as it may, circumstantial indications point to a glaring possibility of non-compliance with DoP&T Office Memo. No. 36035/1/89-Estt.(SCT) dated 20.11.1989 which permits the benefit of reservation in promotion in 'C' and 'D' categories of posts in favour of persons with disabilities. This glaring possibility stands compounded if one is to believe the complainant's assertion that 4 persons were promoted to the post of Scientific Assistant on 31.07.1997 but he was wrongfully and illegally excluded as, among other things, no reservation was made in promotion in favour of persons with disabilities as mandated vide DoP&T's O.M. dated 20.11.1989.

24. This Court also places on record its displeasure and disappointment with regard to respondent No.2 which showed utter disregard for this quasi judicial institution of the Chief Commissioner for Persons with Disabilities by not even entering their appearance to explain their side of the story.

25. In the above view of the matter, the respondent No.1, with active coordination and support of respondent No.2 is hereby directed to review all the Departmental Promotion Committee meetings (DPCs) which have been held on and from the year 1997 to the year 2001, i.e. till the time the complainant got promoted to the post of Scientific Assistant, and ensure that the O.M. of DOPT No.36035/1/89-Estt.(SCT) dated 20.11.1989 which provides for benefit of reservation in promotion in favour of persons with disabilities in 'C' and 'D' categories of posts is complied with in letter and spirit, if required, even by giving notional promotion together with all consequential benefits to the complainant within three months from the date of receipt of this order by them under intimation to this Court.

26. A copy of this Order be marked to the Secretary, Ministry of Home Affairs, Government of India (the said Ministry being the nodal Ministry) for information and appropriate action.

27. The matter stands disposed off with the above directions.

Sd/-

(P.K. Pincha)
Chief Commissioner
for Persons with Disabilities

Copy to:-

The Secretary, Ministry of Home Affairs, Government of India (the said Ministry being the nodal Ministry) for information and appropriate action.